

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-against-

SUNG KOOK (BILL) HWANG, et al.,

Defendants.

22-cv-3402-JPO

CONSENT OF DEFENDANT WILLIAM TOMITA

1. Defendant William Tomita (“Defendant”) waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *United States v. Tomita*, No. 22-cr-231 (S.D.N.Y.), Defendant pleaded guilty to violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78ff] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; Section 9(a)(2) of the Exchange Act [15 U.S.C. §§ 78i(a)(2) and 78ff]; the federal racketeering statute [18 U.S.C. § 1962(d)]; and the federal wire fraud statute [18 U.S.C. § 1343 and 2]. In connection with that plea, Defendant admitted the facts set out in the transcript of his plea allocution, which is attached as Exhibit A to this Consent. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in *United States v. Tomita*.

3. Defendant hereby consents to the entry of the Judgment in the form attached hereto (the “Judgment”) and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Section 9(a)(2) of the Exchange Act [15 U.S.C. § 78i(a)(2)]; and
- (b) permanently prohibits Defendant from serving as an officer or director of any company that has a class of securities registered under Exchange Act Section 12 [15 U.S.C. § 78l] or that is required to file reports under Exchange Act Section 15(d) [15 U.S.C. § 78o(d)], pursuant to Securities Act Section 20(e) [15 U.S.C. § 77t(e)] and Exchange Act Section 21(d)(2) [15 U.S.C. § 78u(d)(2)];

4. Defendant agrees that, upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and, if so, the amount(s) of the disgorgement and/or civil penalty. The Defendant further understands that, if disgorgement is ordered, Defendant shall pay prejudgment interest thereon, calculated from September 1, 2020, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Defendant further agrees that in connection with the Commission’s motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the complaint; (b) Defendant may not challenge the validity of this Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the complaint shall be

accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.

7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Judgment and agrees that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Judgment is filed with the Clerk of the Court, with an affidavit or declaration

stating that Defendant has received and read a copy of the Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy “not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings.” As part of Defendant’s agreement to comply with the terms of Section 202.5(e), Defendant acknowledges the guilty plea for related conduct described in paragraph 2 above, and: (i) will not take any action or make or permit to be

made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.


13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

14. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

15. Defendant agrees that the Commission may present the Judgment to the Court for signature and entry without further notice.

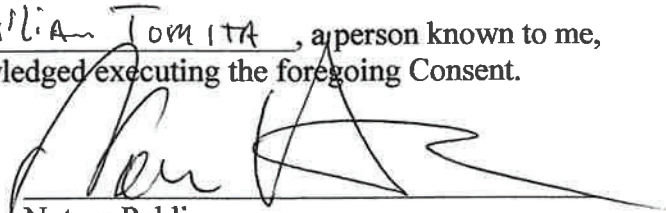
16. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

Dated: 5/23/22



William Tomita

On May 23, 2022, William Tomita, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.



Notary Public
Commission expires:



Approved as to form:

A handwritten signature in blue ink, appearing to read 'H. Cantwell', is written over a horizontal line.

Helen V. Cantwell, Esq.
Debevoise & Plimpton LLP
919 Third Ave.
New York, NY 10022

Attorney for Defendant

EXHIBIT A

XM4MKTOMS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

22 CR 231 (LTS)

5 WILLIAM TOMITA,

6 Defendant.

7 -----x

8 New York, N.Y.
9 April 22, 2022
2:35 p.m.

10 Before:

11 HON. LAURA TAYLOR SWAIN,

District Judge

12 APPEARANCES

13
14 DAMIAN WILLIAMS
United States Attorney for the
15 Southern District of New York
MATTHEW D. PODOLSKY
16 ANDREW M. THOMAS
Assistant United States Attorneys

17 HELEN V. CANTWELL
18 ADELE STICHEL
Attorneys for Defendant

19 ALSO PRESENT:

20 MARLON OVALLES, Pretrial Services
21 ANDREAS ECONOMOU-ELLISON, FBI

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1 (Case called)

2 THE COURT: Good afternoon.

3 Counsel, agents, pretrial services officer, would you
4 please introduce yourselves.

5 MR. PODOLSKY: Good afternoon, your Honor. Matthew
6 Podolsky and Andrew Thomas, for the government. And with us at
7 counsel table is Special Agent Andreas Economou-Ellison, of the
8 Federal Bureau of Investigation.

9 THE COURT: Good afternoon, Mr. Podolsky, Mr. Thomas,
10 and Special Agent Economou-Ellison. You may be seated.

11 MR. THOMAS: Good afternoon, your Honor.

12 MR. OVALLES: Marlon Ovalles, on behalf of pretrial
13 services. Good afternoon, your Honor.

14 THE COURT: Good afternoon, Officer Ovalles. You may
15 be seated.

16 MS. CANTWELL: Good afternoon, your Honor. Helen
17 Cantwell and Adele Stichel, from Debevoise & Plimpton, on
18 behalf of Mr. Tomita. Nice to see you.

19 THE COURT: Nice to see you.

20 Good afternoon, Ms. Cantwell; good afternoon,
21 Ms. Stichel; and good afternoon, Mr. Tomita.

22 Is the gentleman in the back of the courtroom with
23 either of the parties?

24 MR. PODOLSKY: Yes, your Honor. I can represent that
25 he is also a special agent with the FBI.

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1 THE COURT: Thank you.

2 Good afternoon, sir.

3 I have received a sealed application for an order
4 maintaining this case under seal, providing that the
5 documentation and docket entries in this case be kept under
6 seal, and that the case be captioned on the docket as United
7 States v. John Doe. That, of course, also implicates the
8 sealed filing until further order of the Court of the
9 transcript of these proceedings.

10 Ms. Cantwell, is there any objection to the
11 application?

12 MS. CANTWELL: No, your Honor.

13 THE COURT: I've read it thoroughly and conclude that
14 it does set forth appropriate grounds for holding this
15 information from public access, given certain law enforcement
16 considerations. So I am granting it. I note that it provides
17 for an update within three months concerning the continuing
18 need, if any, to maintain these materials under seal.

19 So, Ms. Ng, have we been given a signature copy?

20 THE DEPUTY CLERK: Of what, the advice of rights?

21 THE COURT: Well, no. This is the sealing order. The
22 copy that I have just has a printed S --

23 THE DEPUTY CLERK: I'll give it to you. Sorry.

24 (Pause)

25 THE COURT: So that is the order. Great. Thank you.

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1 I will sign it now.

2 I have signed the order.

3 It is my understanding that, today, we are here for a
4 first appearance and anticipated waiver of indictment,
5 arraignment, and plea proceeding.

6 Is that correct?

7 MR. PODOLSKY: Yes, your Honor.

8 MS. CANTWELL: Yes, your Honor.

9 THE COURT: Thank you.

10 First, I must share with you some important
11 information. Federal Rule of Criminal Procedure 5(f) requires
12 the Court to remind the parties orally and in writing of the
13 prosecution's obligations under the Supreme Court's 1963 *Brady*
14 *v. Maryland* decision and the cases that have built upon that
15 decision and of the possible consequences of violating those
16 obligations.

17 I hereby direct the government to comply with its
18 obligations under *Brady v. Maryland* and its progeny to disclose
19 to the defense all information, whether admissible or not, that
20 is favorable to the defendant, material either to guilt or to
21 punishment, and known to the government. Possible consequences
22 for noncompliance may include dismissal of individual charges
23 or the entire case, exclusion of evidence, and professional
24 discipline or court sanctions on the attorneys responsible.

25 I will enter a written order more fully describing

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1 this obligation and the possible consequences of failing to
2 meet it, and I direct the government to review and comply with
3 that order.

4 Mr. Podolsky, do you and your colleagues understand
5 these obligations, and do you confirm that they have been
6 fulfilled or will be fulfilled?

7 MR. PODOLSKY: Yes, your Honor, I can represent that
8 the government understands its obligations and will comply with
9 them as required in this case.

10 THE COURT: Thank you.

11 I will now turn to the first appearance. And I inform
12 counsel that the arraignment on the information and the waiver
13 of indictment will be addressed as part of the anticipated plea
14 allocution colloquy.

15 So, first, Mr. Tomita, would you please stand.

16 Thank you.

17 Please state your full name.

18 THE DEFENDANT: My full name is William Kenji Tomita,
19 your Honor.

20 THE COURT: How old are you, sir?

21 THE DEFENDANT: Thirty-eight years old.

22 THE COURT: I will now explain to you certain rights
23 that you have under the Constitution of the United States. You
24 have the right to remain silent; you need not make any
25 statement. Even if you've already made statements to the

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1 authorities, you need not make any additional statements. Any
2 statements that you do make can be used against you.

3 Do you understand these rights?

4 THE DEFENDANT: I understand, your Honor.

5 THE COURT: You have the right to be released, either
6 conditionally or unconditionally, pending trial unless I find
7 that there are no conditions that would reasonably assure your
8 presence at future court hearings and the safety of the
9 community. If the government were to ask me to detain you
10 pending trial, you are entitled to a prompt hearing on whether
11 such conditions exist.

12 Do you understand this right?

13 THE DEFENDANT: I understand, your Honor.

14 THE COURT: Are you a citizen of the United States?

15 THE DEFENDANT: That is correct.

16 THE COURT: Are you also a citizen of any other
17 country?

18 THE DEFENDANT: I'm a dual national of Japan, your
19 Honor.

20 THE COURT: Because of your dual nationality, you are
21 entitled to have Japan's consular representatives here in the
22 United States notified that you have been arrested or detained.
23 After your consular officials are notified, they may call or
24 visit you. You are not required to accept their assistance,
25 but they may be able to help you with legal counsel and may

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1 contact your family and visit you if you are detained, among
2 other things.

3 I now direct the Office of the United States Attorney
4 to make the appropriate consular notification if you request
5 that that be made.

6 THE DEFENDANT: Thank you, your Honor.

7 THE COURT: Mr. Podolsky will do that if there is a
8 request.

9 MR. PODOLSKY: Correct.

10 THE COURT: Thank you.

11 Mr. Tomita, you have the right to be represented by an
12 attorney today and at all future proceedings in this case, and
13 if you are unable to afford an attorney, I will appoint an
14 attorney to represent you.

15 Do you understand these rights?

16 THE DEFENDANT: I do, your Honor. Thank you.

17 THE COURT: Do you wish to have, and are you able to
18 obtain and afford, counsel on your own?

19 THE DEFENDANT: That is correct, your Honor.

20 THE COURT: Have you retained Ms. Cantwell and her
21 firm, Debevoise & Plimpton, to represent you in this case?

22 THE DEFENDANT: That is correct, your Honor.

23 THE COURT: Do you understand that you're responsible
24 for paying the fees and expenses associated with Ms. Cantwell's
25 defense of you in this case?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And, for the record, do you want the Court
3 to appoint counsel for you?

4 THE DEFENDANT: Not at this time, your Honor. Thank
5 you.

6 THE COURT: Thank you. You may be seated.

7 I would ask that Ms. Cantwell remain standing.

8 I'm informed that Mr. Tomita has an application to
9 waive indictment and enter a plea of guilty to the five-count
10 superseding information that is labeled United States v.
11 William Tomita.

12 Is that correct, Ms. Cantwell?

13 MS. CANTWELL: Yes, your Honor.

14 THE COURT: And is this plea pursuant to an agreement
15 with a printed date of April 15, 2022, and an execution date of
16 April 22, 2022, which has been marked as Government Exhibit 1
17 in its executed form?

18 MS. CANTWELL: Yes, your Honor.

19 THE COURT: Thank you.

20 And do you have that marked copy of the agreement
21 there at defense table?

22 MS. CANTWELL: Yes.

23 THE COURT: Thank you.

24 Is there an executed Advice of Rights Form that has
25 been marked as Court Exhibit 1?

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1 MS. CANTWELL: Yes, your Honor.

2 THE COURT: Do you have that at defense table as well?

3 MS. CANTWELL: I do.

4 THE COURT: Thank you, Ms. Cantwell and Ms. Stichel.

5 You can be seated at this time.

6 Mr. Podolsky, would you please make a statement for
7 the record regarding the government's victim identification and
8 notification activities, if any, in connection with this
9 proceeding.

10 MR. PODOLSKY: Yes, your Honor.

11 We understand our obligations in that respect and will
12 comply with them -- reasonably comply with them under the
13 circumstances of this case.

14 THE COURT: And I take it that given the particular
15 circumstances of this proceeding, although there may or may not
16 have been victims identified, there would be no notification at
17 this point?

18 MR. PODOLSKY: To this point in time, that is correct,
19 but we will make reasonable efforts to notify them as we can.

20 THE COURT: Thank you. And that is for the reasons
21 that are set forth in the application relating to the sealing
22 of the materials?

23 MR. PODOLSKY: That's correct, your Honor.

24 THE COURT: Thank you.

25 Mr. Tomita, before I accept your waiver of indictment

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1 and your guilty plea, there are a number of questions that I
2 must ask you while you are under oath to assure that your
3 waiver and plea are valid. At times, I may cover a point more
4 than once, and I may cover matters that were also addressed in
5 the Advice of Rights Form that you have seen. If I do, that
6 will be because it is very important that you understand what
7 is happening here today.

8 In that connection, if you don't understand something
9 that I ask you, please say so, and I will reword the question
10 or you may speak with your attorney. Do you understand that?

11 THE DEFENDANT: I do, your Honor. Thank you.

12 THE COURT: Thank you.

13 Please stand now to take the oath.

14 (Defendant sworn)

15 THE COURT: Please remain standing, but put your hand
16 down.

17 Please, again, state your full name for the record.

18 THE DEFENDANT: My full name is William Kenji Tomita.

19 THE COURT: Mr. Tomita, do you understand that you
20 have solemnly promised to tell the truth, and that if you
21 answer any of my questions falsely, your false or untrue
22 answers may later be used against you in another prosecution
23 for perjury, or making a false statement?

24 THE DEFENDANT: I understand, your Honor.

25 THE COURT: Thank you. You can be seated for the next

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1 portion of the proceeding.

2 THE DEFENDANT: Thank you.

3 THE COURT: You are 38 years old; is that correct?

4 THE DEFENDANT: Correct.

5 THE COURT: How far did you go in school?

6 THE DEFENDANT: I finished a four-year Bachelor's
7 program.

8 THE COURT: In what field?

9 THE DEFENDANT: In economics and international
10 studies.

11 THE COURT: Are you able to read, speak, and
12 understand the English language well?

13 THE DEFENDANT: Yes.

14 THE COURT: And you are a citizen of both the United
15 States and of Japan?

16 THE DEFENDANT: That is correct, your Honor.

17 THE COURT: How did you become a citizen of the United
18 States?

19 THE DEFENDANT: By birth, your Honor.

20 THE COURT: Are you now, or have you recently been,
21 under the care of a doctor or a psychiatrist?

22 THE DEFENDANT: I have in the past, your Honor.

23 THE COURT: Are you currently suffering from any
24 conditions for which you are under treatment?

25 THE DEFENDANT: I do have anxiety related to public

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1 speaking, your Honor.

2 THE COURT: Does that condition affect you today in
3 terms of your ability to understand and respond to information
4 here in court?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Are you taking any medication that would
7 affect negatively your ability to understand and respond to
8 information?

9 THE DEFENDANT: I took a Xanax, per my doctor's
10 prescription, just because of my fear of public speaking, but
11 that will not prevent me from public speaking.

12 THE COURT: And so do you feel comfortable speaking in
13 the courtroom today?

14 THE DEFENDANT: Yes, I do, very comfortable right now.
15 Thank you.

16 THE COURT: Do you feel comfortable making important
17 decisions for yourself today?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: Have you ever been hospitalized for any
20 mental illness or treated or hospitalized for any type of
21 addiction, including drug or alcohol addiction?

22 THE DEFENDANT: I have not, your Honor.

23 THE COURT: In the past 24 hours, have you taken any
24 drugs, medicine, or pills or had any alcohol to drink?

25 THE DEFENDANT: No, your Honor.

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1 THE COURT: Other than the prescribed medication that
2 you just mentioned?

3 THE DEFENDANT: Correct, your Honor.

4 THE COURT: Have you ever been addicted to any drugs
5 or alcohol?

6 THE DEFENDANT: I have not, your Honor.

7 THE COURT: Is your mind clear today?

8 THE DEFENDANT: It is, your Honor.

9 THE COURT: Are you feeling well physically today?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Are you represented by lawyers here today?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And what are your lawyers' names?

14 THE DEFENDANT: Helen Cantwell and Adele Stichel, from
15 Debevoise, your Honor.

16 THE COURT: Thank you.

17 Ms. Cantwell, Ms. Stichel, do either of you have any
18 doubt as to Mr. Tomita's competence to waive indictment and
19 plead guilty at this time?

20 MS. CANTWELL: No, your Honor.

21 MS. STICHEL: No.

22 THE COURT: Thank you.

23 Mr. Podolsky, Mr. Thomas, does either of you have any
24 doubt as to Mr. Tomita's competence to waive indictment and
25 plead guilty?

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1 MR. PODOLSKY: No, your Honor.

2 MR. THOMAS: No, your Honor.

3 THE COURT: Mr. Tomita, your attorney has informed me
4 that you want to waive indictment and enter a plea of guilty to
5 a five-count superseding information.

6 Do you wish to waive indictment and plead guilty?

7 THE DEFENDANT: That is correct, your Honor.

8 THE COURT: Have you fully discussed your case with
9 your attorneys, including the charges to which you intend to
10 plead guilty, and any defenses that you may have to those
11 charges?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Have you and your attorneys also discussed
14 the consequences of pleading guilty?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Are you satisfied with your attorneys and
17 their representation of you?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: On the basis of Mr. Tomita's responses to
20 my questions and my observations of his demeanor, I find that
21 he is fully competent to waive indictment and enter an informed
22 plea at this time.

23 Before I accept your waiver of indictment and plea,
24 sir, I'm going to ask you some additional questions. These
25 questions are intended to satisfy the Court that you want to

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1 plead guilty because you are, in fact, guilty and that you
2 fully understand your rights and the consequences of your plea.

3 I am now going to describe to you certain rights that
4 you have under the Constitution and laws of the United States.
5 You will be giving up these rights if you plead guilty. Please
6 listen carefully. If you don't understand something that I'm
7 saying or describing, stop me, and I or your attorney will
8 explain it more fully.

9 Under the Constitution and laws of the United States,
10 you have the right to a speedy and public trial by a jury on
11 the charges against you that are set out in the superseding
12 information.

13 Do you understand that?

14 THE DEFENDANT: I do, your Honor.

15 THE COURT: Do you understand that you have the right
16 to plead not guilty, and to continue to plead not guilty to
17 each of the charges?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: If there were a trial, you would be
20 presumed innocent, and the government would be required to
21 prove you guilty by competent evidence and beyond a reasonable
22 doubt. You would not have to prove that you were innocent at a
23 trial.

24 Do you understand that?

25 THE DEFENDANT: I understand that, your Honor.

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1 THE COURT: If there were a trial, a jury composed of
2 12 people selected from this district would have to agree
3 unanimously in order to find you guilty. Do you understand
4 that?

5 THE DEFENDANT: I understand, your Honor.

6 THE COURT: If there were a trial, and at all stages
7 leading up to it, you would have the right to be represented by
8 an attorney, and if you could not afford one, an attorney would
9 be provided to you free of cost.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: If there were a trial, you would have the
13 right to see and hear all of the witnesses against you, and
14 your attorney could cross-examine them. In addition, you would
15 have the right to have your attorney object to the government's
16 evidence and offer evidence on your behalf if you so desired.
17 You would also have the right to have witnesses required to
18 come to court to testify in your defense, and you would have
19 the right to testify yourself, but you would not be required to
20 testify.

21 Do you understand all of that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that, if there were a
24 trial, and you decided not to testify, no adverse inference
25 could be drawn against you based on your decision not to

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1 testify?

2 THE DEFENDANT: I understand, your Honor.

3 THE COURT: Do you understand that if you were
4 convicted at a trial, you would have the right to appeal that
5 verdict?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand each and every one of
8 the rights that I have asked you about?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you have any questions about any of
11 these rights?

12 THE DEFENDANT: I do not, your Honor.

13 THE COURT: Do you understand that by pleading guilty
14 today, you will be giving up each and every one of these
15 rights?

16 THE DEFENDANT: I understand that, your Honor.

17 THE COURT: Do you also understand that you will be
18 giving up any possible claim that your constitutional rights
19 may have been violated?

20 THE DEFENDANT: I understand that, your Honor.

21 THE COURT: And do you understand that if you plead
22 guilty today, you will not have a trial?

23 THE DEFENDANT: I understand that, your Honor.

24 THE COURT: Do you understand that by pleading guilty,
25 you will also have to give up your right not to incriminate

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1 yourself because I will ask you questions about what you did in
2 order to satisfy myself that you are guilty as charged, and you
3 will have to admit and acknowledge your guilt?

4 THE DEFENDANT: I understand that, your Honor.

5 THE COURT: Do you understand that you can change your
6 mind right now and refuse to plead guilty; you don't have to
7 enter this plea if you don't want to for any reason.

8 Do you understand that fully?

9 THE DEFENDANT: I understand that fully, your Honor.

10 THE COURT: And do you still want to plead guilty?

11 THE DEFENDANT: Yes, I would like to proceed, your
12 Honor.

13 THE COURT: The document that contains the charges to
14 which you've indicated you wish to plead guilty is called a
15 superseding information. It has been issued by the United
16 States Attorney. You have a constitutional right to be charged
17 by an indictment rather than an information. An indictment
18 would be a charge issued from a grand jury.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Ms. Cantwell, would you please show
22 Mr. Tomita the waiver of indictment form.

23 MS. CANTWELL: He has it, your Honor.

24 THE COURT: Thank you.

25 Mr. Tomita, have you signed this form?

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1 THE DEFENDANT: I have, your Honor.

2 THE COURT: Did you read it before you signed it?

3 THE DEFENDANT: I did, your Honor.

4 THE COURT: Did you discuss it with your attorney
5 before you signed it?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: And did you fully understand it before you
8 signed it?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand that if you do not waive
11 indictment, if the government wants to prosecute you on the
12 particular charges that are in the superseding information, the
13 government would have to present the charges to a grand jury,
14 which might or might not indict you on them?

15 THE DEFENDANT: I understand that, your Honor.

16 THE COURT: Do you understand that you're under no
17 obligation to waive indictment?

18 THE DEFENDANT: I understand that, your Honor.

19 THE COURT: And do you understand that by signing the
20 waiver of indictment, you are giving up your right to have
21 these charges presented to a grand jury?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand what a grand jury is?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Has anyone given you anything or made any

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1 threats or promises to you to get you to waive indictment?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Have you seen a copy of the superseding
4 information, which is captioned United States of America v.
5 William Tomita?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Have you read it?

8 THE DEFENDANT: Several times, your Honor.

9 THE COURT: Have you discussed it with your attorney?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand the charges against you
12 that are detailed in that information?

13 THE DEFENDANT: I do, your Honor.

14 THE COURT: If you want me to, I will read the
15 information out loud now here in full to you in court.

16 Would you like me to read it out loud to you in court?

17 THE DEFENDANT: For me, that's not necessary, your
18 Honor.

19 THE COURT: Then it's not necessary for me, if it's
20 not necessary for you.

21 THE DEFENDANT: Okay.

22 THE COURT: Thank you. You've waived the public
23 reading.

24 I find that Mr. Tomita's waiver of indictment is
25 knowing and voluntary. It is accepted and so ordered.

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1 I will now, however, ask you summary questions about
2 the charges in the information.

3 So, first, do you understand that Count One of the
4 information charges you with violating Title 18 of the United
5 States Code, Section 1962(d) by willfully and knowingly being
6 part of a conspiracy, from at least in or about 2020 up to and
7 including in or about March 2021, to violate the racketeering
8 laws of the United States by conducting and participating,
9 directly and indirectly, in the affairs of what the superseding
10 information defines as the Archegos Enterprise through a
11 pattern of activity consisting of multiple offenses involving
12 fraud in the sale of securities, and that's indictable under
13 Title 18 Section 1343, relating to wire fraud, and that this
14 count charges that it was part of the conspiracy that you
15 agreed that a conspirator would commit at least two acts of
16 racketeering activity in the conduct of the affairs of the
17 Archegos Enterprise?

18 I always need you to answer in words.

19 THE DEFENDANT: Sorry. The question --

20 THE COURT: So do you understand that that is the
21 charge?

22 THE DEFENDANT: I understand that's the charge, yes,
23 your Honor.

24 THE COURT: Thank you.

25 Do you understand that Count Two charges you with

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1 violating Title 17 of the Code of Federal Regulations,
2 Section 240.10b-5, Title 15 of the United States Code, Sections
3 78j(b) and 78ff, and Section 2 of Title 18 of the United States
4 Code, by engaging in and aiding and abetting a scheme to
5 secretly amass market power in numerous securities traded on
6 United States securities exchanges, and to use that market
7 power and manipulative and abusive trading techniques for the
8 purpose of fraudulently altering the prices of those
9 securities, from at least in or about 2020 up to and including
10 at least in or about March of 2021?

11 THE DEFENDANT: That is correct, your Honor, I
12 understand it.

13 THE COURT: So you understand that that is the charge?

14 THE DEFENDANT: I understand that that's the charge,
15 correct.

16 THE COURT: Thank you.

17 Do you understand that Count Three charges you with
18 violating Title 15 of the United States Code, Sections
19 78i(a)(2) and 78ff, as well as Title 18, Section 2, by engaging
20 in and aiding and abetting a series of transactions in
21 securities and securities-based swaps underlying certain of
22 Archegos' positions in order to raise or depress the price of
23 and induce others to purchase those securities, from at least
24 in or about 2020 up to and including at least in or about March
25 of 2021?

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1 THE DEFENDANT: I understand it, your Honor.

2 THE COURT: Do you understand that Count Four charges
3 you with violating Title 15 of the United States Code, Sections
4 78j(b) and 78ff, Title 17, CFR, Section 240.10b-5, and Title 18
5 of the United States Code, Section 2, by engaging in and aiding
6 and abetting a scheme to defraud Archegos' counterparties
7 through false and misleading statements regarding aspects of
8 Archegos' business, portfolio, and assets, from at least in or
9 about 2020 up to and including at least in or about March of
10 2021?

11 THE DEFENDANT: I understand what it means, your
12 Honor.

13 THE COURT: Do you understand that -- when you say you
14 understand what it means, you understand what the charge
15 written in the information means?

16 THE DEFENDANT: Yes, I understand what the charge is
17 and agree to the charge.

18 That's the question, right?

19 THE COURT: Yes, the question is: Do you understand
20 what you're charged with?

21 THE DEFENDANT: Yes, I understand what I'm charged
22 with.

23 THE COURT: Thank you.

24 THE DEFENDANT: The one we just read, I understand it.

25 THE COURT: Yes, thank you. So we have one more now.

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1 Do you understand that Count Five charges you with
2 violating Title 18 of the United States Code, Sections 1343 and
3 2, by engaging in and aiding and abetting a scheme to defraud
4 Archegos' counterparties of their rights to control their
5 assets, and thereby exposing Archegos' counterparties to risk
6 of economic harm by false and misleading statements regarding
7 aspects of Archegos' business, portfolio, and assets, including
8 statements conveyed through interstate wires, from in or about
9 2020 up to and including in or about March 2021?

10 THE DEFENDANT: I understand the charge, your Honor.

11 THE COURT: Thank you.

12 Do you understand that the government would have to
13 prove each and every part, or element, of each of these charges
14 beyond a reasonable doubt at a trial if you did not plead
15 guilty?

16 THE DEFENDANT: I understand that, your Honor.

17 THE COURT: Thank you.

18 Mr. Podolsky, would you please explain what the
19 government would have to prove if we were to go to trial on the
20 charges in the superseding information.

21 MR. PODOLSKY: Yes, your Honor.

22 As to Count One, racketeering conspiracy, the
23 government would have to prove beyond a reasonable doubt:

24 First, that the enterprise alleged in the indictment
25 existed;

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1 Second, that the enterprise affected interstate or
2 foreign commerce;

3 Third, that the defendant was associated with, or was
4 employed by, the enterprise;

5 And, fourth, that the defendant knowingly and
6 willfully conspired with at least one other person to
7 participate in the conduct of the affairs of the enterprise
8 through a pattern of racketeering activity.

9 I will note that the racketeering activities -- the
10 predicate racketeering activities are alleged in paragraph 2 of
11 the information, and your Honor has already read them just a
12 few moments ago.

13 As to both Counts Two and Four, which both charge
14 Title 15 securities fraud, the government would have to prove
15 beyond a reasonable doubt:

16 First, that in connection with the purchase or sale of
17 a security, the defendant did any one or more of the following:

18 First, employed a device, scheme, or artifice to
19 defraud;

20 Or second, made an untrue statement of a material
21 fact, or omitted to state a material fact, which made what was
22 said under the circumstances misleading;

23 Or, third, engaged in an act, practice, or course of
24 business that operated or would operate as a fraud or deceit
25 upon a purchaser or seller;

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1 Second, that the defendant acted willfully, knowingly,
2 and with the intent to defraud;

3 And, third, that the defendant knowingly used or
4 caused to be used any means or instruments of transportation or
5 communication in interstate commerce or the use of the mails in
6 furtherance of the fraudulent conduct.

7 As to Count Three, market manipulation, the government
8 would have to prove beyond a reasonable doubt:

9 First, that the defendant effected a series of
10 transactions in a security;

11 Second, that the series of transactions either
12 created -- either (a) created actual or apparent active trading
13 in the security, or (b) raised or depressed the price of the
14 security;

15 Third, that the conduct involved, directly or
16 indirectly, the use of the mails, any means of interstate
17 commerce, or any facility of a national securities exchange;

18 And, fourth, that the defendant acted willfully and
19 with the purpose of inducing the purchase or sale of a security
20 by others.

21 As to Count Five, wire fraud, the government would
22 have to prove beyond a reasonable doubt:

23 First, that there was a scheme or artifice to defraud
24 or to obtain money or property by materially false and
25 fraudulent pretenses, representations, or promises;

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1 Second, that the defendant knowingly and willfully
2 participated in a scheme or artifice to defraud with knowledge
3 of its fraudulent intent and with the specific intent to
4 defraud;

5 And, third, that in the execution of the scheme, the
6 defendant used or caused the use of interstate or foreign
7 wires, such as telephone calls, emails, or the transmission of
8 money through the use of wire transfers.

9 The government would also have to prove venue in the
10 Southern District of New York by a preponderance of the
11 evidence as to each count.

12 THE COURT: Thank you, Mr. Podolsky.

13 Mr. Tomita, do you understand what the government
14 would have to prove if you did not plead guilty to these
15 charges?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that the maximum
18 possible penalty for the crime charged in Count One is 20 years
19 of imprisonment, plus a fine of the greatest of \$250,000, twice
20 the gain resulting from the offense, or twice the loss to other
21 people resulting from the offense, plus a \$100 special
22 assessment, plus three years of supervised release after your
23 term of imprisonment, plus full restitution to all persons
24 injured by your criminal conduct?

25 THE DEFENDANT: I understand that, your Honor.

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1 THE COURT: Do you understand that the maximum
2 possible penalty for the crimes charged in each of Counts Two
3 and Four is 20 years of imprisonment, plus a fine of the
4 greatest of \$5 million, twice the gain resulting from the
5 offense, or twice the loss to other people resulting from the
6 offense, plus a \$100 special assessment, plus three years of
7 supervised release after your term of imprisonment, plus full
8 restitution to all persons injured by your criminal conduct?

9 THE DEFENDANT: I understand that, your Honor.

10 THE COURT: Do you understand that the maximum
11 possible penalty for the crime charged in Count Three is
12 20 years of imprisonment, plus a fine of the greatest of
13 \$5 million, twice the gain resulting from the offense, or twice
14 the loss to other people resulting from the offense, plus a
15 \$100 special assessment, plus three years of supervised release
16 after your term of imprisonment, plus full restitution to all
17 persons injured by your criminal conduct?

18 THE DEFENDANT: I understand that, your Honor.

19 THE COURT: Do you understand that the maximum
20 possible penalty for the crime charged in Count Five is
21 20 years of imprisonment, plus a fine of the greatest of
22 \$250,000, twice the gain resulting from the offense, or twice
23 the loss to other people resulting from the offense, plus a
24 \$100 special assessment, plus three years of supervised release
25 after your term of imprisonment, plus full restitution to all

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1 persons injured by your criminal conduct?

2 THE DEFENDANT: I understand that, your Honor.

3 THE COURT: Do you understand that the maximum
4 possible combined penalty for the five crimes to which you
5 propose to plead guilty is 100 years of imprisonment, plus a
6 fine of \$15,500,000, or, if greater, the sums of the relevant
7 gains, losses, and statutory amounts associated with your
8 offenses, plus full restitution to all persons injured by your
9 criminal conduct, plus a total of \$500 as the mandatory special
10 assessment, plus supervised release for three years after your
11 term of imprisonment?

12 THE DEFENDANT: I understand that, your Honor.

13 THE COURT: I will now give you some information and
14 verify your understanding of the supervised release aspect of
15 the potential penalty.

16 Supervised release means that you will be subject to
17 monitoring when you are released from prison. Terms and
18 conditions will be imposed. If you violate any of the set
19 terms and conditions, you can be sent back to prison without a
20 jury trial.

21 If you are on supervised release, and you do not
22 comply with any of the set terms or conditions, you can be sent
23 back to prison for up to two years. You will be given no
24 credit for the time that you served in prison as a result of
25 your sentence and no credit for any time spent on postrelease

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1 supervision. So, for example, if you received a prison term
2 and then a three-year term of supervised release, and, after
3 you left prison, you lived up to the terms of supervised
4 release for almost three years, but then you violated some term
5 of the supervised release, you could be sent to prison for two
6 whole years.

7 Do you understand that?

8 THE DEFENDANT: I understand that, your Honor.

9 THE COURT: Do you also understand that if I accept
10 your guilty plea and adjudge you guilty, that adjudication may
11 deprive you of valuable civil rights, such as the right to
12 vote, the right to hold public office, the right to serve on a
13 jury, and the right to possess any kind of firearm?

14 THE DEFENDANT: I understand that, your Honor.

15 THE COURT: Do you understand that there are
16 sentencing guidelines that the Court must consider in
17 determining your sentence?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: Have your attorneys discussed the
20 sentencing guidelines with you?

21 THE DEFENDANT: They have, your Honor.

22 THE COURT: Do you understand that in determining your
23 sentence, the Court must calculate the applicable sentencing
24 guidelines range and consider that range, possible departures
25 under the sentencing guidelines, and other sentencing factors

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1 under Title 18 of the United States Code, Section 3553(a)?

2 THE DEFENDANT: I understand that, your Honor.

3 THE COURT: Do you understand that if your attorneys
4 or anyone else has attempted to estimate or predict what your
5 sentence will be, their estimate or prediction could be wrong?

6 THE DEFENDANT: I do, your Honor.

7 THE COURT: Do you also fully understand that even if
8 your sentence is different from what your attorneys or anyone
9 else told you it might be, or if it is different from what you
10 expect, you will still be bound to your guilty plea, and you
11 will not be allowed to withdraw your guilty plea?

12 THE DEFENDANT: I understand that, your Honor.

13 THE COURT: Do you understand that the sentence to be
14 imposed will be determined solely by the Court, and that I can
15 only determine the sentence to be imposed after the probation
16 office prepares a presentence report?

17 THE DEFENDANT: I understand that, your Honor.

18 THE COURT: Do you understand that the Court has
19 discretion, while taking into account the specific provisions
20 and policy statements in the guidelines, to sentence you to any
21 period of imprisonment between time served, at the low end of
22 the range, and the 100-year combined statutory maximums, at the
23 high end?

24 THE DEFENDANT: I understand this, your Honor.

25 THE COURT: Are you now serving any state or federal

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1 sentence, or are you being prosecuted for any other crime?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Do you understand that in connection with
4 Count One, the information also includes a forfeiture
5 allegation, in which the government asserts that you are
6 required to forfeit to the United States any interest acquired
7 or maintained in violation of Title 18 of the United States
8 Code, Section 1963, any interest in, security of, claim
9 against, or property or contractual right of any kind affording
10 a source of influence over any enterprise which you and your
11 coconspirators established, operated, controlled, conducted, or
12 participated in the conduct of, in violation of Title 18,
13 Section 1962, and any property constituting or derived from any
14 proceed obtained, directly or indirectly, from the racketeering
15 activity charged in Count One?

16 THE DEFENDANT: I understand this, your Honor.

17 THE COURT: Do you understand that in connection with
18 Counts Two through Five, the information includes an additional
19 forfeiture allegation, in which the government asserts that you
20 are required to forfeit to the United States any and all
21 property, real and personal, that constitutes or is derived
22 from proceeds traceable to the commission of the offenses
23 charged in those counts, including, but not limited to, a sum
24 of money in United States currency representing the amount of
25 proceeds traceable to the commission of those offenses?

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1 THE DEFENDANT: I understand this, your Honor.

2 THE COURT: Would you please look again at your
3 agreement, which has been marked as Government Exhibit 1.

4 Have you signed this agreement?

5 THE DEFENDANT: Yes, I have, your Honor.

6 THE COURT: Did you read it before you signed it?

7 THE DEFENDANT: I did, your Honor.

8 THE COURT: Did you discuss it with your attorney
9 before you signed it?

10 THE DEFENDANT: Yes, I did, your Honor.

11 THE COURT: Did you fully understand the agreement
12 before you signed it?

13 THE DEFENDANT: That is correct, your Honor.

14 THE COURT: Does the agreement reflect accurately your
15 complete and total understanding of the entire agreement
16 between the government, your attorney, and you?

17 THE DEFENDANT: It does, your Honor.

18 THE COURT: Is everything that you understand about
19 your plea, cooperation, and sentence covered in the agreement?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Has anything been left out?

22 THE DEFENDANT: No, I do not believe so, your Honor.

23 THE COURT: Has anyone made any promises to you, other
24 than what is written in that agreement, or threatened you or
25 forced you or given you anything to get you to plead guilty or

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1 enter into the agreement?

2 THE DEFENDANT: None of the above, your Honor.

3 THE COURT: Do you understand that even if the
4 government does not oppose or take a position on what your
5 attorney will ask as a sentence, I am free to impose whatever
6 sentence I believe is appropriate under the circumstances and
7 the applicable law, and you will have no right to withdraw your
8 plea?

9 THE DEFENDANT: I fully understand that, your Honor.

10 THE COURT: Do you understand that the agreement
11 provides that you must cooperate fully with the Office of the
12 United States Attorney, the Federal Bureau of Investigation,
13 and any other law enforcement agency designated by the United
14 States Attorney?

15 THE DEFENDANT: I understand that, your Honor.

16 THE COURT: Do you understand that the agreement does
17 not bind any federal, state, or local prosecuting authority,
18 other than the United States Attorney?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that the agreement
21 provides that, if the United States Attorney determines that
22 you have provided substantial assistance in an investigation or
23 prosecution, and if you have fully complied with the
24 understandings specified in the agreement, the United States
25 Attorney will file a motion pursuant to Section 5K1.1 of the

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1 sentencing guidelines, requesting that the Court sentence you
2 in light of the factors set forth in Section 5K1.1(a)(1)
3 through (5)?

4 THE DEFENDANT: I understand that, your Honor.

5 THE COURT: Do you understand that the factors that
6 the Court may consider under Section 5K1.1 include the
7 significance and usefulness of your assistance, taking into
8 consideration the government's evaluation of your assistance,
9 the truthfulness, completeness, and reliability of any
10 information or testimony you provided, the nature and extent of
11 your assistance, any injury suffered or any danger or risk of
12 injury to you or your family as a result of your assistance,
13 and the timeliness of your assistance?

14 THE DEFENDANT: I understand that, your Honor.

15 THE COURT: Do you understand that even if the United
16 States Attorney files such a motion, the sentence to be imposed
17 on you remains within the sole discretion of the Court?

18 THE DEFENDANT: I understand this, your Honor.

19 THE COURT: Do you understand that you will not be
20 entitled to withdraw your plea, even if the Court denies the
21 motion?

22 THE DEFENDANT: I understand that, your Honor.

23 THE COURT: Do you understand that if the United
24 States Attorney determines that you have not provided
25 substantial assistance in an investigation or prosecution, or

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1 that you have violated any provision of the agreement, the
2 United States Attorney is not obligated to file a motion under
3 Section 5K1.1?

4 THE DEFENDANT: I understand this, your Honor.

5 THE COURT: Do you understand that you will not be
6 entitled to withdraw your guilty plea, even if the United
7 States Attorney does not file the motion?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that, on page 4, your
10 agreement provides that, if you commit any further crimes, or
11 it is determined that you gave false, incomplete, or misleading
12 testimony or information, or that you otherwise violated any
13 provision of the agreement, you will be subject to prosecution
14 for any federal violations of which the United States Attorney
15 has knowledge, including perjury and obstruction of justice?

16 THE DEFENDANT: I understand this, your Honor.

17 THE COURT: Do you understand that, also on page 4,
18 the agreement provides that, if you commit any further crimes,
19 or it is determined that you gave false, incomplete, or
20 misleading testimony or information, or otherwise violated any
21 provision of the agreement, all statements that you have made
22 to the United States Attorney and other designated law
23 enforcement agents, and any testimony that you have given
24 before a grand jury or other tribunal, may be admissible in
25 evidence in any criminal proceedings against you?

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1 Do you understand that?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: Do you understand that your agreement also
4 provides that you may not assert a claim that such statements
5 should be suppressed from evidence, and that you have waived
6 your right to claim that such statements should be suppressed
7 from evidence?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: Do you understand that, on page 2, the
10 plea agreement includes your agreement, with respect to
11 Count One of the information, to forfeit to the United States
12 any interest acquired or maintained as a result of the
13 racketeering activity charged in Count One; any interest in,
14 security of, claim against, or property or contractual right of
15 any kind affording a source of influence over any enterprise
16 which you and your coconspirators established, operated,
17 controlled, conducted, or participated in the conduct of, in
18 violation of Title 18, Section 1962, as charged in Count One;
19 and any property constituting or derived from any proceeds
20 obtained, directly or indirectly, from the racketeering
21 activity charged in Count One?

22 THE DEFENDANT: I understand this, your Honor.

23 THE COURT: Do you understand that page 2 of the
24 agreement also includes your agreement with respect to
25 Counts Two through Five of the information to forfeit to the

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1 United States any and all property, real or personal, that
2 constitutes, or is derived from, the commission of the offenses
3 alleged in Counts Two through Five?

4 THE DEFENDANT: I understand this, your Honor.

5 THE COURT: Do you understand that any amount that you
6 do forfeit will not be credited toward any fines, restitution,
7 cost of imprisonment, or any other additional penalty that the
8 Court may impose on you?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand that, on page 4, the
11 agreement provides that the government will not object to your
12 continued release upon bail conditions to be set, but that the
13 government reserves the right to move for revocation or
14 modification of those conditions without notice to you if it
15 determines that you have violated any provision of your
16 agreement or any release condition, or if it determines that
17 revocation or modification is otherwise appropriate?

18 THE DEFENDANT: I understand this, your Honor.

19 THE COURT: Do you still want to plead guilty pursuant
20 to this plea agreement?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Ms. Cantwell, do you know of any valid
23 reason why Mr. Tomita would prevail at trial?

24 MS. CANTWELL: No, your Honor.

25 THE COURT: Do you know of any reason why he should

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1 not be permitted to plead guilty?

2 MS. CANTWELL: No, your Honor.

3 THE COURT: Mr. Tomita, would you and your attorneys
4 please stand, and would you tell me what makes you guilty of
5 each of the crimes to which you are pleading guilty today.

6 MS. CANTWELL: And, your Honor, just to be clear, he
7 is going to read from a prepared statement that we worked on
8 together.

9 THE COURT: Very good. And I may have some questions
10 for him following the reading of the statement.

11 MS. CANTWELL: Okay.

12 THE DEFENDANT: Okay.

13 From March 2020 through March 2021, I was head trader
14 at Archegos Capital Management. During this time, I and others
15 executed trades that allowed the fund to amass market power and
16 certain securities traded on U.S. exchanges. Archegos used
17 security-based swaps to gain exposure to these securities while
18 concealing the true size of the fund's positions from the
19 market and our trading counterparties.

20 Once Archegos gained market power in these securities,
21 I and others used this power to trade in such a way as to
22 artificially manipulate the prices of the securities.

23 Acting at the direction of the head of the fund, I
24 traded to increase the prices of names in which Archegos held
25 long positions and reduced the prices of securities in which

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1 the fund helped short positions. I did this by, for example,
2 buying large amounts of a stock when the price dropped in
3 response to negative news or trading premarket when I knew the
4 fund's activity would have a greater impact on price.

5 I manipulated the prices of these securities in order
6 to influence others in the market to buy or sell the securities
7 in ways that would benefit Archegos' key positions and increase
8 Archegos' purchasing power through variation margin.

9 In addition to manipulating the prices of certain
10 securities, I also made misrepresentations to Archegos' trading
11 counterparties. These counterparties were banks and brokers
12 who extended the fund credit to trade on margin and entered
13 into swap agreements with the fund.

14 I knew that the fund's counterparties considered
15 Archegos' portfolio and assets when setting margin rates and
16 limits on swap capacity. In order to maintain favorable margin
17 rates and gain additional swap capacity, I made false and
18 misleading statements and omissions regarding the size and the
19 composition of the fund's portfolio. I knew that doing so
20 would mislead counterparties as to the true risks presented by
21 the fund. I made these false and misleading statements and
22 omissions during phone calls and email exchanges with
23 representatives from the banks.

24 While engaged in the activities I described, I worked
25 under the supervision of Sung Kook Hwang, also known as Bill

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1 Hwang, the founder and head of Archegos. I agreed with Bill
2 and others to carry out the business of Archegos through a
3 pattern of manipulating the prices of securities and deceiving
4 counterparties. I did so knowing that I, Bill, or others
5 committed at least two manipulative or deceptive acts in the
6 course of conducting Archegos' affairs. I knew that Archegos'
7 trading activity was carried out over interstate wires and
8 affected interstate commerce.

9 I knew this conduct was wrong at the time that I
10 participated in it, and I knew that things I did were illegal.

11 Thank you.

12 THE COURT: Thank you.

13 Does everything that you have just read to me from
14 those notes truthfully relate your actions and your knowledge
15 at the relevant time?

16 THE DEFENDANT: Correct, your Honor.

17 THE COURT: Mr. Podolsky, are there any further
18 factual issues that the government would like addressed in the
19 plea allocution?

20 MR. PODOLSKY: Just one, your Honor.

21 If you could ask whether any of the activities that
22 Mr. Tomita just described took place in Manhattan or in New
23 York City, just to clarify venue.

24 THE DEFENDANT: The answer to that question is, yes,
25 some of these activities took place in Manhattan.

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1 THE COURT: Thank you.

2 Mr. Tomita and your counsel, you can be seated for a
3 moment, and I am going to ask Mr. Podolsky to summarize the
4 government's evidence against Mr. Tomita.

5 MR. PODOLSKY: Thank you, your Honor.

6 If we were to proceed to trial in this case, the
7 evidence offered by the government would include: Testimony by
8 law enforcement officials and percipient witnesses, extensive
9 email Bloomberg message and text message records, notes and
10 recordings of telephone calls, and corporate bank and other
11 financial and trading records.

12 THE COURT: And it is the government's position that
13 that body of evidence would be sufficient to establish guilt
14 beyond a reasonable doubt?

15 MR. PODOLSKY: Very much, your Honor, yes.

16 THE COURT: Thank you.

17 Mr. Tomita, would you please stand again.

18 How do you now plead to the charge in Count One of the
19 information, guilty or not guilty?

20 THE DEFENDANT: Guilty, your Honor.

21 THE COURT: How do you plead to the charge in
22 Count Two of the information?

23 THE DEFENDANT: Guilty, your Honor.

24 THE COURT: How do you plead to the charge in
25 Count Three of the information?

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1 THE DEFENDANT: Guilty, your Honor.

2 THE COURT: How do you plead to the charge in
3 Count Four of the information?

4 THE DEFENDANT: Guilty, your Honor.

5 THE COURT: And how do you plead to the charge in
6 Count Five of the information?

7 THE DEFENDANT: Guilty, your Honor.

8 THE COURT: Are you pleading guilty to each of these
9 charges because you are, in fact, guilty of the crimes charged?

10 THE DEFENDANT: That is correct, your Honor.

11 THE COURT: Are you pleading guilty voluntarily and of
12 your own free will?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Would you please look at the Advice of
15 Rights Form, which has been labeled Court Exhibit 1.

16 Have you signed this form?

17 THE DEFENDANT: I have, your Honor.

18 THE COURT: Did you read it before you signed it?

19 THE DEFENDANT: I did, your Honor.

20 THE COURT: Did you discuss it with your attorneys
21 before you signed it?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And did you understand it before you
24 signed it?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Ms. Cantwell, did you also review and sign
2 Court Exhibit 1?

3 MS. CANTWELL: I did, your Honor.

4 THE COURT: Ms. Cantwell, are there any other
5 questions that you believe I should ask Mr. Tomita in
6 connection with this plea?

7 MS. CANTWELL: No, your Honor.

8 THE COURT: Mr. Podolsky, are there any other
9 questions that you believe I should ask in connection with the
10 plea?

11 MR. PODOLSKY: No, your Honor.

12 THE COURT: Mr. Tomita, you have acknowledged that you
13 are guilty as charged in the superseding information. I find
14 that you know your rights and that you are waiving them
15 voluntarily. Because your plea is entered knowingly and
16 voluntarily, and is supported by an independent basis in fact
17 containing each of the essential elements of each offense, I
18 accept your guilty plea, and I adjudge you guilty of the
19 offenses charged in Counts One, Two, Three, Four, and Five of
20 the superseding information captioned United States of America
21 v. William Tomita, to which you have pleaded guilty.

22 Ms. Cantwell, do you wish to be present for any
23 interview of Mr. Tomita in connection with the presentence
24 report?

25 MS. CANTWELL: I do, your Honor.

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1 THE COURT: Thank you. You can be all be seated.

2 So, counsel, what is your desire with respect to
3 setting a sentencing date or a control date?

4 MR. PODOLSKY: Your Honor, in the circumstances of
5 this case, I think additional time would afford an opportunity
6 for the Court to receive information that would be important to
7 Mr. Tomita's sentencing. For that reason, we would request a
8 control date within six months, at which time we will update
9 the Court as to whether a presentence investigation report
10 should be prepared, whether additional time is necessary. Of
11 course, in the interim, if it becomes clear that we can proceed
12 to sentence sooner, we'll update the Court and request
13 preparation of the report at a sooner time.

14 THE COURT: Thank you.

15 Ms. Ng, may we have a control date about six months
16 out from here?

17 THE DEPUTY CLERK: Friday, October 28, 2022, at
18 11:00 a.m.

19 THE COURT: Counsel, are you all available on
20 October 28, 2022, at 11:00 in the morning, for a control date?

21 MR. PODOLSKY: We are, your Honor.

22 MS. CANTWELL: Sure thing, your Honor. Thank you.

23 THE COURT: Thank you.

24 October 28, 2022, at 11:00 a.m., is set as the control
25 date for sentencing.

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1 Counsel, when it does come time to have the
2 presentence report prepared, I would ask that you give your
3 comments and any objections back promptly to the probation
4 office when the initial disclosure is made, and I ask that you
5 make your submissions in accordance with my sentencing
6 submission procedures, which are part of my individual
7 practices on the Court's website.

8 Mr. Tomita, at some point, the probation office will
9 be preparing a presentence report to assist me in sentencing
10 you. You will be interviewed by the probation office. It is
11 important that the information that you give to the probation
12 officer be truthful and accurate. The report is important in
13 my decision as to what your sentence will be. You and your
14 attorney have a right and will have an opportunity to examine
15 the report, to challenge or comment on it, and to speak on your
16 behalf before sentencing. Failing to be truthful with the
17 probation officer and the Court may have an adverse effect on
18 your sentence and may subject you to prosecution.

19 Do you understand that?

20 THE DEFENDANT: I understand that, your Honor.

21 THE COURT: Thank you.

22 Is there a proposed bail package?

23 MR. PODOLSKY: There is, your Honor.

24 We've discussed with defense counsel and would jointly
25 propose that Mr. Tomita be released today upon his signature of

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1 a \$500,000 personal recognizance bond, to be signed within
2 three weeks by one financially responsible person or one
3 additional financially responsible person.

4 THE COURT: One person in addition to Mr. Tomita?

5 MR. PODOLSKY: Exactly, your Honor.

6 THE COURT: Okay.

7 MR. PODOLSKY: His travel to be restricted to the
8 Continental United States, and he will surrender today both his
9 United States and Japanese passports and any other travel
10 documents.

11 And I will say that in light of the agreement between
12 Mr. Tomita and the government and the fact that he has his
13 passports to be surrendered here with him, we do believe that
14 these conditions would reasonably assure his appearance in
15 court, as well as the protection of the community.

16 THE COURT: Thank you.

17 Would it be regular supervision?

18 MR. PODOLSKY: Yes, your Honor.

19 THE COURT: Officer Ovalles, are there any other
20 conditions that you think need to be specified in the
21 disposition sheet?

22 MR. OVALLES: Your Honor, the only condition that I
23 would ask that your Honor note, as opposed to regular pretrial
24 supervision, it would be pretrial supervision as directed.
25 Besides that, nothing else, your Honor.

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1 THE COURT: Very good.

2 I will now prepare the disposition form.

3 This is a voluntary surrender, correct?

4 MS. CANTWELL: Yes, your Honor.

5 THE COURT: Today?

6 MS. CANTWELL: Yes, your Honor.

7 THE COURT: Shall I say defendant to be released on
8 own signature plus surrender of passports?

9 MR. PODOLSKY: Yes, your Honor.

10 THE COURT: What I have written on this form is:

11 Date of arrest: 4/22/22, voluntary surrender.

12 Agreed conditions of release: \$500,000 PRB1FRP;
13 travel restricted to Continental United States; surrender
14 travel documents and no new applications; pretrial supervision
15 as directed by pretrial services.

16 Defendant to be released on own signature plus the
17 following conditions: Surrender of passports; remaining
18 conditions to be met by 21 days.

19 Is there anything else you would expect me to write on
20 this form?

21 MR. PODOLSKY: No, your Honor. Thank you.

22 THE COURT: Officer Ovalles, anything else?

23 MR. OVALLES: Nothing further, your Honor. Thank you.

24 THE COURT: Very good.

25 Let me print out copies to sign them.

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1 I find that these conditions are appropriate and
2 sufficient based on the representations that have been made
3 here to assure against risk of flight and any danger to the
4 public.

5 (Pause)

6 THE COURT: I've provided the five copies to Ms. Ng.

7 Mr. Tomita, do you understand the conditions that I
8 have imposed for your release pending sentencing?

9 THE DEFENDANT: I do, your Honor. Thank you.

10 THE COURT: And do you understand that the violation
11 of any conditions can have severe consequences?

12 THE DEFENDANT: I certainly do, your Honor.

13 THE COURT: Thank you.

14 Do you also understand that if you don't appear in
15 court on the date that is finally set for your actual
16 sentencing, you will be guilty of a criminal act for which you
17 could be sentenced to imprisonment separate and apart from, and
18 in addition to, any other sentence that you might receive for
19 the crimes to which you have just pleaded guilty?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Then I will expect to see you on the
22 appropriate date.

23 And I also encourage you to get yourself vaccinated
24 and get the boosters that are available to you to protect
25 yourself and your family.

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1 THE DEFENDANT: Thank you, your Honor. I'll keep up
2 with my vaccinations, as I have been.

3 THE COURT: Thank you. Glad to hear it.

4 I didn't just single you out for that. I encourage
5 everybody.

6 Is there anything else that we need to take up
7 together this afternoon?

8 MR. PODOLSKY: No, your Honor. Thank you.

9 MS. CANTWELL: No, your Honor. Thank you very much.

10 THE COURT: Thank you.

11 Thank you, all. Stay safe and be well. We're
12 adjourned.

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